IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4732 OF 2007

Mr. Dnyaneshwar Shanker Dalvi ..Petitioner

Vs.

1. Jaslok Hospital and ors. ..Respondents

Mr. R.S. Apte with Ms. Leela D. Malu for petitioner.
Mr. J.P. Cama, Senior Advocate with Mr. B.G. Govil for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : November 19, 2007.

P.C.:

1. Heard Mr. Apte with Ms. Malu the learned counsel for the petitioner. Mr. Cama the learned Senior Counsel with Mr. Govil appears for the respondents.

2. The petitioner came to be dismissed from service by an order dated 19/12/2000 after putting in about 11 years of service. This dismissal was on account of the charges of forgery but was effected

without conducting any departmental enquiry, as was required under the law. The petitioner, therefore, challenged the said order of dismissal by filing Complaint (ULP) No. 8 of 2001 under Item - 1 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 (for short the Act). By way of an interim relief the learned Judge of the Labour Court was pleased to direct the respondent-hospital to pay the subsistence allowance, though his prayer for reinstatement pending complaint was rejected. The operative part of the order dated 25/6/2001 reads as under:-

> ". The application U-2 for interim relief stands rejected.
>
> . The respondent Hospital is directed to conduct the enquiry against the complainant Shri Dyaneshwar Shanker Dalvi as per the chargesheet dt. 20/11/2000, within a period of 6 months from the date of this order and then take disciplinary action against the complainant. The respondent Hospital shall pay subsistence allowance to the complainant

during the pendency of the enquiry.

. The complaint to proceed on merit expeditiously."

3. On 1/7/2005 a joint pursis was filed before the Labour Court in Complaint (ULP) No. 8 of 2001 by both the parties requesting the court to take the complaint on record on the same day (in the normal course the complaint was to appear on the board on 26/7/2005). In this joint pursis it was clearly stated that the complainant wanted to withdraw the complaint as he had settled the matter with the respondent-hospital out of court. The learned Judge of the Labour Court on the same day passed the following order on this pursis at Exh.UC-2:-

"Applicant was present in the court. Contents are verified and found to be correct. He is not interested in prosecuting further as the matter is settled in between the parties. Hence the order of disposal is passed on

Exh.U-1."

Undoubtedly, Exh.U-1 was the main complaint filed by the complainant-petitioner.

4. The petitioner thereafter approached the Industrial Court and filed Complaint (ULP) No. 531 of 2005 under Item - 9 of Schedule IV of the Act sometimes in the month of November, 2005 and the substantial prayer in this complaint reads as under:-

> ". The respondent be directed to pay the complainant the amount of settlement Rs.5,19,200/- with further interest at 18% p.a. till actual payment and interim payment amount of the same as prayed for."

. In the said complaint, an application for interim relief under Section 30(2) of the Act was filed and the learned Member of the Industrial Court by his order dated 15/12/2005 was pleased to reject the said application. The complaint before the

Industrial Court was based mainly on the ground that there was a settlement between the petitioner - complainant and the respondents on the basis of which Complaint (UPL) No.8 of 2001 was withdrawn on 1/7/2005 but subsequently the respondents failed to implement the terms of the said settlement. As per the petitioner the settlement was two folds, namely, (a) in his place his wife was to be employed as a Badli Worker and (b) in addition he was to be paid an amount of Rs.5,19,200/- by way of compensation. It was alleged by him in the Complaint (ULP) No. 531/05 filed before the Industrial Court that the respondents did not pay the said amount of Rs.5,19,200/- and, therefore, the cause of action to file the said complaint arose. Surprisingly, the petitioner himself submitted an application before the Industrial Court in Complaint (ULP) No. 531 of 2005 at Exh.U-12 seeking permission to withdraw the complaint and this application was allowed by the learned Member of the Industrial Court on 24/1/2006.

4. It was thereafter that the petitioner approached the Labour Court by his application marked

as Misc. Application No. 8 of 2006 and applied for restoration of Complaint (ULP) No.8 of 2001. Para 2 of the said application is relevant to be reproduced as under:-

> "The complainant states that the abovenamed complaint was settled between the party on 1/7/2005 and the respondents were agreed to pay the settlement amount Rs.5,19,000/- and also join duty to the complainant's wife, though the respondent joined the complainant's wife on daily wages duty on September 2005 but deny to pay the settlement amount Rs.5,19,000/- and done the breach of settlement. However, in view of the said, the complainant filed Complaint (ULP) No. 531 of 2005 before the Hon'ble Industrial Court and in the said complaint the respondents clearly deny that they had agreed to pay the settlement amount of Rs.5,19,000/-. Hence the present application."

5. On this restoration application the respondent-hospital filed reply along with the affidavits of its officers and opposed the application. It was submitted that the so called settlement allegedly offering to pay the amount of Rs.5,19,200/- was a forged document and at no point of time such an agreement was arrived at between the parties. At the same time the hospital admitted that the document purported to be settlement had the signature of one of its officers but the contents therein were disputed and it was claimed that it was a created document. The hospital further admitted that it had agreed to employ the petitioner's wife in his place but as a Badli Worker and this was so done. The learned Judge of the Labour Court recorded the evidence of both the parties on this application for restoration and by the impugned order dated 9/3/2007 the application for restoration came to be rejected. In the normal course this order passed by the Labour Court could also have been challenged by filing a revision application under Section 44 of the Act but the petitioner has preferred to invoke the powers of this court under Article 227 of the Constitution

directly and on this ground itself this petition could have been rejected summarily.

6. Mr. Apte the learned counsel for the petitioner has drawn my attention to the order dated 11/7/2007 passed by this court referring certain documents to the handwriting expert. The Addl. Chief State Examiner of Documents, C.I.D., M.S., Mumbai by his letter dated 18/8/2007 requested the Registrar of this Court to obtain the contemporary signatures of the officers concerned i.e. Shri Gurushanth Phatate, General Manager (HRD) of Jaslok Hospital & Research Center, Shri P.K. Kuriakose, Personnel Officer of Jaslok Hospital & Research Centre and Advocate Shri G.L. Govil, but subsequently no further order was passed though the petition came up on few occasions before the Court.

7. Be that as it may, it is not disputed that the petitioner voluntarily signed the pursis at Exh.UC-2 on 1/7/2005 and the contents of the said pursis were verified by the learned Judge of the Labour Court before he passed the order of disposal of the

complaint on the ground that the matter was settled between the parties out of the court. The main grievance of the petitioner in his complaint before the Industrial Court as well as in the restoration application has been that the settlement terms have been breached by the respondents and, therefore, for enforcement of the said settlement for payment of Rs.5,19,200/- he filed the said complaint before the Industrial Court under Item 9 of Schedule IV of the Act. Even though the application for interim relief filed in the said complaint was rejected by the learned Member on 15/12/2005 by a reasoned order, nothing stop the complainant-petitioner from proceeding with the complaint before the Industrial Court on its own merits. In the said complaint admittedly he had brought on record the documents purported to be the settlement between the parties, which were also annexed to the application for restoration filed before the Labour Court. Whether the settlement was a forged or created document or it was a genuine document could have been adjudicated by the Industrial Court and even the said document could have been referred to the handwriting expert. The

petitioner did not allow the complaint to be decided on merits and instead preferred to withdraw the same and thus denied himself the adjudication to be undertaken in Complaint (ULP) No. 531 of 2005 by the Industrial Court.

8. His application for restoration before the Labour Court was, in fact, not maintainable after he had withdrawn Complaint (ULP) No. 8 of 2001 filed before the Labour Court. The learned Judge of the Labour Court after recording oral evidence has considered at length the circumstances leading to the withdrawal of Complaint (ULP) No. 8 of 2001 as well as Complaint (ULP) No. 531 of 2005. He has also recorded, as a matter of fact, that the so called documents purported to be settlement were never placed on record in Complaint (ULP) No. 8 of 2001 before it was disposed as withdrawn by the order dated 1/7/2005 and all along the complainant even admitted before the Industrial Court as well as before the Labour Court (in his oral depositions while in the witness box) that he had signed the pursis for withdrawal of the complaint from the Labour Court on account of the

settlement between the parties and this settlement was out of the court and also the withdrawal of his complaint from the Industrial Court. I am, therefore, satisfied that the impugned order cannot be termed as perverse or patently erroneous so as to call for interference under Article 227 of the Constitution.

9. Hence, the petition is rejected summarily.

10. However, this order will not preclude the petitoner from resorting to an alternative remedy, if any, under the Industrial Disputes Act, 1947.

(B.H. Marlapalle,J.)